and is left to the Commission to decide for non-commercial stations. Commenters submit that the commercial station standard should be adopted across-the-board. Adoption of different standards would clearly be arbitrary.

The standard in the Act is a signal strength measurement, but the Act calls for a "good quality" signal to be delivered. Indeed, a signal can meet the strength standard and yet be virtually unwatchable, thus not of "good quality", e.g., as a result of bad ghosting or electrical interference, for reasons wholly beyond the control of the cable operator. Moreover, the Act does not address where and how a signal is to be measured, nor does it address the question of when the signal must be measured. As to the quality issue, Commenters submit that the Commission's cable technical standards provide an appropriate benchmark. A Television Allocation Study Organization ("TASO") Grade 2 picture should be receivable at the system's principal headend, i.e., a television picture with a visual signal level to undesired noise ratio of at least 43 dB.[7]

Commenters submit that a good quality signal must be available on a regular basis. There are many factors which can affect the quality of a signal, e.g., the time of year, the weather, and the quality of maintenance of the station. The Commission should adopt test procedures which permit cable operators to measure signal quality at the principal headend in the event that a station's signal is suspected of not meeting

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[7]See 47 C.F.R. §76.605(a)(7).

signal quality standards on a regular basis. If the station does not meet these standards on a regular basis, then the provision in the Act for both commercial and NCE stations should be triggered, namely, if the station wishes to maintain must-carry status, it must bear the expense of delivering a good quality signal to the cable system's principal headend.

The Commission should clarify that broadcast stations that are presently carried and which assert must-carry rights under the Act should not be exempt from the requirement to reimburse the cable system if an off-the-air good quality signal cannot be received at the system's principal headend. Likewise, the Commission should clarify that signal carriage agreements entered into after July 1, 1990 are not automatically preempted. Since pre-July 1, 1990, contracts are grandfathered, there is no reason to assume that contracts entered into after that date are invalid. Indeed, the Commission should encourage private resolution of such disputes, so as to avoid further administrative burden.

D. **Procedural Requirements.**

With regard to notification of the deletion or repositioning of channels, the Act does not require the FCC to mandate notification to subscribers for the deletion or channel repositioning of commercial must-carry stations. Congress left this to the discretion of franchising authorities. See Section 16(c) of the 1992 Cable Act.

The provisions of the Act which require compensation to cable operators for the added copyright payments necessitated by complying with the must-carry regulations should be read as requiring stations to compensate cable systems for such copyright payments regardless of whether the station is already being carried.

The Commission should clarify whether the indemnity for copyright payments can be satisfied by the "distant" commercial station asking for must-carry agreeing to allow the system to carry a local translator in lieu of the parent. A cable system should be permitted to carry a translator in lieu of the parent station to satisfy signal quality requirements or to satisfy the copyright indemnification provisions assuming that there is agreement between the parent station and the cable system. Indeed, if such an agreement between the parent station and the cable system exists, the translator should be allowed to satisfy a must-carry requirement even if the parent's signal also reaches the principal headend with a Grade B signal, for example, if the translator happens to supply a better quality signal.

As to complaints and compliance, the Commission should utilize the procedures in Section 76.7 of its rules. The Commission must give operators at least 30 days to respond to a NCE station's must-carry complaint. Ten days is an inadequate amount of time to respond to a complaint when it has not been preceded by a notification of an alleged violation, as is

required for commercial stations. There should be a time limit for filing a complaint when a cable system gives notice of dropping or repositioning the signal or refuses a carriage request. The Commission should give stations, NCE and commercial, 30 days to file a complaint in such situations. Commercial television stations should be required to send an inquiry letter within 30 days after the May 1 election deadline if they are not being carried as of that date and have failed to make an election. Equity dictates that once 30 days have elapsed with nothing being heard from a station, it should have to wait until the next three year window. Finally, if the Commission adopts a fee for filing of requests for special relief, it should also require the losing party to pay the fee. Thus, for example, if a station requests special relief and wins, the cable system would be ordered to reimburse the station for the fee amount.

II. RETRANSMISSION CONSENT.

A. **Applicability.**

The NPRM raises four issues concerning the applicability of the retransmission requirement imposed by Section 6 of the 1992 Cable Act.[8] The Commission first asks whether the definition of "multichannel video programming distributor," the entity to whom the new retransmission consent requirements of the statute apply, should be read to include SMATV and MATV

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[8]Section 6 adds a new subsection (b) to Section 325 of the Communications Act of 1934.

systems. Second, the Commission asks whether any distinctions in the manner of applying the retransmission consent provisions are warranted based on whether the entity involved is covered or not covered by the compulsory copyright licensing provisions of the Copyright Act. Third, the Commission requests comment on its tentative conclusions that the retransmission consent requirements apply only to entities directly selling programming and interacting with the public. Fourth, the Commission requests comment on its tentative conclusion that the retransmission consent provisions of the statute apply only to television broadcast stations rather than broadcast stations generally. Each of these points is addressed below.

1. Applicability to SMATV and MATV.

The 1992 Cable Act defines the term "multichannel video programming distributor" broadly to include "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive - only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."[9] Although SMATV and MATV systems are not specifically delineated in the list of examples contained in the definition, the statutory language is clear that the definition of a multichannel video programming distributor is not limited to the examples given and

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[9]Section 2(c)(6) of the 1992 Cable Act adds a new definition of a "multichannel video programming distributor" to Section 602 of the Communications Act of 1934.

encompasses any person who makes available multiple channels of video programming for sale to subscribers. Indeed, the legislative history makes clear that the term "multichannel video programming distributor" was to be interpreted broadly, especially with respect to the retransmission consent requirement, stating that:

> The Committee believes, based on the legislative history of this provision, that Congress' intent was to allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means. (Emphasis supplied.)[10]

Significantly, the statute does not require a separate charge to be imposed for broadcast retransmission service in order for the retransmission consent requirement to apply. As long as all three elements of the statutory definition are met, i.e., the entity: (1) makes available multiple channels of video programming (broadcast, non-broadcast or both); (2) for purchase; (3) by subscribers or customers, that entity qualifies as a multichannel video programming distributor and must obtain retransmission consent for any television broadcast station which it retransmits, subject to the exceptions enumerated in the statute. Where a SMATV, MATV, MMDS or other multichannel video service provider makes multiple channels of video programming available for purchase, the retransmission consent provisions clearly require the consent of any broadcast stations which are also being provided over the same system,

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[10]S. Rep. No. 92, 102d Cong. 1st Sess. 34 (1992) ("Senate Report").

regardless of whether a separate charge is imposed for the broadcast retransmission component of the service.

The Commission has acknowledged that the term "multichannel video programming distributor" is used extensively throughout the statute.[11] However, the statute provides only a single definition of multichannel video programming distributor. The retransmission consent provisions of the statute do not provide any basis to impose a separate or different definition of multichannel video programming distributor for retransmission consent purposes than for the other statutory provisions. Indeed, in extending the Communications Act's equal employment opportunity provisions to all multichannel video programming distributors, the legislative history of the 1992 Cable Act makes clear that Congress considered SMATV systems to be multichannel video programming distributors. The House Report states that:

> Section 634(h)(1) is amended to extend the requirements of this section to not only cable and satellite master antenna television operators but to any multichannel video programming distributor. (Emphasis supplied.)[12]

This language indicates that Congress viewed both cable systems and SMATV systems to be included within the larger category of

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[11]The NPRM acknowledges that the term "multichannel video programming distributor" is used in the sections of the 1992 Cable Act dealing with effective competition (Section 3), program access (Section 9), ownership (Section 11), program carriage agreements (Section 12) and equal employment opportunity (Section 22). NPRM at ¶42.

[12]H.R. No. 628, 102d Cong. 2d Sess. 113 (1992) ("House Report").

multichannel video programming distributors. Thus, it is clear that the retransmission consent requirement was intended to apply to all present and future multichannel video programming distributors.[13]

2. Compulsory License.

The Commission does not have the discretion to apply the retransmission consent provisions of the statute any differently depending on whether the entity involved is covered by the compulsory copyright licensing provisions of the Copyright Act. Not only is there no provision in the 1992 Cable Act which would authorize such differential treatment, but there is an express provision which bars such treatment. New Section 325(b)(6) of the Communications Act clearly states that:

> Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code . . . .[14]

This provision makes absolutely clear that the retransmission consent requirements contained in Section 625(b) are meant to function entirely independently from copyright licensing and intellectual property issues. Thus, the Commission may not exclude MMDS from the definition of multichannel video programming distributor for purposes of the retransmission

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[13]For example, this would include providers of the newly-proposed 28 GHz LMDS service. See FCC New Report No. DC-2284 (December 10, 1992).

[14]47 U.S.C. Section 325(b)(6).

consent requirement merely because MMDS operators have been held not to qualify for the Section 111 compulsory copyright license. To the contrary, MMDS operators are expressly included within the definition of multichannel video programming distributors to whom the retransmission consent provisions apply. The Commission does not have jurisdiction to claim that the grant of retransmission consent to an MMDS operator excuses it from having to obtain separate copyright licensing arrangements for the programming contained on the broadcast signal, since such an interpretation would constitute a modification of the compulsory copyright license by extending the license to cover wireless cable systems in violation of Copyright Office rulings.[15] Nor should it matter whether the MMDS operator distributes the broadcast signals on its microwave frequencies or adds the broadcast signals to the service package through direct reception apparatus installed at the microwave receive point.

3. Intermediate Entities.

The Commission's tentative conclusion that retransmission consent obligations apply only to the entity selling programming directly to the public is correct. In order to qualify as a multichannel video programming distributor, an entity must make available multiple channels of video programming for purchase by customers or subscribers. In the

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[15]Copyright Office Docket No. 86-7B, 57 Fed. Reg. 3284 (January 29, 1992).

case of an MMDS, ITFS or DBS licensee which leases out its facilities to a programmer or retailer, the licensee would not fall within the definition of multichannel video programming distributor because it does not make available multiple channels of video programming for purchase by subscribers but merely provides the facilities over which multiple channels of video programming can be made available for such purposes by others. The same result would obtain for any common carrier who merely provides signal transportation services to its customers and cannot fairly be said to have engaged in the sale of such video programming.[16]

4. Applicability to Radio Stations.

The Commission also raises the question of whether retransmission consent applies only to television broadcast stations or whether the provision was intended to apply to radio stations as well. Although the Commission notes that the statutory language contained in Section 325(b)(1) is not expressly limited to television stations, both the structure of the 1992 Cable Act and the legislative history indicate that such a limitation was intended.

Section 2 of the 1992 Cable Act contains 21 findings by Congress which underpin the adoption of the legislation. Of those 21 findings, 15 apply to the purported justification for imposing mandatory carriage and retransmission consent

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[16]See Second Report and Order in CC Docket 87-266, 7 RR 2d FCC Rcd 5781 (1992).

requirements on cable television systems and other multichannel video programming distributors. The statute clearly indicates that the mandatory carriage and retransmission consent provisions are intended to work in concert. Yet, only television stations are granted must-carry rights by the 1992 Cable Act. This is a persuasive indication that the retransmission consent provisions were also to apply only to television broadcasters. Indeed, subsection 19 of the Section 2 findings, dealing specifically with retransmission consent, clearly makes reference to <u>television</u> broadcasters as opposed to broadcasters generally. That subsection states in relevant part that:

> At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived <u>from carriage of the signals of network affiliates, independent television stations, and public television stations</u>. . . . Cable systems, therefore, obtain great benefit from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability.[17]

The legislative history of the 1992 Cable Act also makes clear that Congress intended the retransmission consent provisions to apply to television broadcasters only. Thus, the Senate Report on retransmission consent states that:

> The Committee has concluded that the exception to section 325 for cable retransmissions has created a

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[17]Pub. L. 102-385, 106 Stat. 1460 (1992) at Section 2(a)(19) (emphasis supplied).

> distortion in the video marketplace which threatens the future of over-the-air broadcasting.[18]

As further evidence of Congress' intent that the retransmission consent provisions apply only to the retransmission of television broadcast stations, the Conference Report states that:

> In the proceeding implementing retransmission consent, the conferees direct the Commission to consider the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier . . . .[19]

For similar reasons, the Commission should clarify that the retransmission consent provisions of the statute do not apply to Canadian, Mexican, or other television stations not licensed by the FCC. Sections 625(b)(3)(A) and 625(b)(4) of the 1992 Cable Act clearly demonstrate that Congress intended the must-carry and retransmission consent provisions to operate in tandem. Section 625(b)(3)(A) establishes the basis for a must-carry/retransmission consent election and provides, in relevant part, that:

> [T]he Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and the right to signal carriage under section 614 . . . .

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[18]Senate Report at 35 (emphasis supplied).

[19]H.R. Conf. Rep. No. 862, 102d Cong. 2d Sess. 76 (1992) ("Conference Report") (emphasis supplied).

47 U.S.C. §625 (b)(3)(A). Similarly, Section 625(b)(4) makes clear that by electing retransmission consent, a station loses certain protections given to must-carry stations, stating that:

> If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent . . . . The provisions of section 614 [commercial must-carry] shall not apply . . . .

47 U.S.C. §625(b)(4). Taken together, these provisions demonstrate that Congress sought to provide local television broadcasters with both must-carry and retransmission consent rights and with the benefit of electing between those rights on a system-by-system basis. Significantly, in defining that class of stations to whom the must-carry/retransmission consent election applies, the statute applies only to any "full power television broadcast station . . . licensed and operating on a channel regularly assigned to its community by the Commission . . . ." 47 U.S.C. §534(h)(1)(A). Congress was well aware of the fact that, unlike domestic stations, which are licensed by the Commission, Canadian and Mexican television stations do not operate on channels assigned to their communities by the FCC.[20] Thus, such stations are not considered local commercial stations under the statute and may not assert must-carry rights

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[20]For example, the Copyright Revision Act of 1976 contains an express provision allowing certain Canadian and Mexican stations to be considered local for copyright purposes even though such stations were not subject to the FCC's must-carry rules in effect on April 15, 1976. See 17 U.S.C. §111(f)(1976). Significantly, Congress did not make a similar provision for Canadian and Mexican stations in the 1992 Cable Act precisely because such stations remain outside the FCC's jurisdiction.

under any circumstance. Given that must-carry and retransmission consent were designed to operate in tandem, and given that the FCC is charged with continuing oversight for the implementation of retransmission consent, it is highly unlikely that Congress could have intended to give Canadian and Mexican stations broader retransmission consent rights that it gave domestic stations whose exercise of those rights are regulated by the FCC.

B. **Scope of Retransmission Consent.**

There are several issues which the Commission needs to address with respect to the geographic scope of retransmission consent. These issues deal with systemwide application of retransmission consent, dual ADI systems and the "same election" requirement.[21]

1. Systemwide Application.

The Commission must acknowledge that a broadcast station's must-carry/retransmission consent rights must be asserted systemwide, and not on a community-by-community basis.[22] The express language of the 1992 Cable Act clearly indicates that the retransmission consent provisions were intended to apply

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[21]The Commission should ensure that systems with fewer than 300 subscribers are exempt from the retransmission consent requirement since Section 614(b)(1) of the Act exempts them from must-carry.

[22]The issue needs clarification because the Commission's 1972 must-carry rules applied on a community-by-community basis as do its present syndicated exclusivity, network non-duplication and sports blackout rules.

uniformly throughout a particular cable system. Section 325(b)(4) states that:

> If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

47 U.S.C. §325(b)(4). This language makes clear that a station must make a retransmission consent/must-carry election for each particular system and that a station is not free to assert must-carry rights as to particular communities served by a cable system and attempt to negotiate terms for retransmission consent with respect to the remaining communities served by the system.[23]

Application of the retransmission consent and must-carry provisions on a systemwide basis is required to effectuate Congress' mandate that basic rates be reasonable.[24] If broadcast stations were allowed to elect must-carry and retransmission consent on a community-by-community basis, this would greatly add to the cost of providing cable service by allowing television stations to assert must-carry rights in some or most of the communities served by the cable system, and then demand unreasonable retransmission consent payments as a

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[23]Similarly, both the commercial and non-commercial must-carry provisions of the statute refer to the signal carriage requirements of "cable systems" and contemplate that broadcast signal carriage would be uniform systemwide. See, e.g., Sections 614(a), 615(b)(1).

[24]Section 623, as amended by the 1992 Cable Act.

condition of allowing carriage in the remaining communities. Even where a cable operator is able to resist these demands, it would be forced to expend large sums of money to trap out signals in individual communities and possibly different sets of signals in different communities. In many instances, centralized trapping might not be feasible since a single trunk run might serve several different communities and a station's election would not necessarily be the same throughout those communities. This problem is exacerbated by the trend over the last several years of clustering systems and dismantling unnecessary headends in order to improve signal quality and technical reliability, and also to achieve operational cost savings and economies of scale. To accommodate the must-carry and retransmission consent provisions on a community basis, cable operators could be forced to redesign their systems and reconstruct unnecessary headends which have been dismantled for economic and technical reasons. Indeed, it is possible that such significant expenditures could be required every three years as stations change their must-carry elections.

2. Dual ADI Systems.

Because the Commission's must-carry and retransmission consent rules are designed to apply uniformly on a systemwide basis, the Commission must make a special provision for technically integrated cable systems which serve communities

located in more than one ADI.[25] While these comments deal elsewhere with the unique must-carry problems of multiple ADI systems, special provisions must be made for such systems with respect to retransmission consent as well. For example, the Commission's rules must provide that a station's must-carry election with respect to the local ADI portion of the cable system should automatically be deemed to grant retransmission consent as to any non-ADI communities served by the same system. Without such a provision, cable systems could be subjected to precisely the same problems and compliance costs as would be faced by systems generally if the Commission were to adopt a community based rather than systemwide standard for application of must-carry/retransmission consent.

3. The "Same Election" Requirement.

The Commission has requested comment on the application of new Section 325(b)(3)(B) of the Communication Act. That section provides, in relevant part, that:

> If there is more than one cable system which serves the same geographic area, a station's [must-carry/ retransmission consent] election shall apply to all such cable systems.

47 U.S.C. §325(b)(3)(B). Specifically, the Commission has requested comment on what degree of overlap is required before

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[25]The number of systems serving communities in more than a single ADI is significant. According to a survey undertaken by the Pennsylvania Cable Television Association ("PCTA") of its member cable systems, approximately 15% of the systems surveyed served communities located in more than one ADI. See Exhibit 1 attached hereto ("PCTA Signal Carriage Survey").

the broadcast station can be required to make the same election with regard to both systems.

The "same election" requirement is intended to ensure that competing cable systems are treated equally and to prevent television stations from taking advantage of a competitive situation between two cable operators to unduly leverage exorbitant retransmission consent payments. Without the same election requirement, broadcast stations in a competitive cable market would be able to demand must-carry on one of the cable systems and force the competing cable system to accede to burdensome terms and conditions in order to obtain retransmission consent for that same programming. Especially strong stations might be able to tip the competitive balance to such an extent that competition in that market could ultimately be diminished. Such a result is clearly what Congress sought to prevent in adopting the "same election" requirement.[26]

In implementing this requirement, the Commission has specifically requested comment on the "degree of overlap between cable system service areas [that] should trigger the 'same election' requirement."[27] It is submitted that a trigger based on some set degree of actual service area overlap is not the best way to effectuate the purpose of the statute. While

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[26]Indeed, in order to better effectuate this purpose, the Commission's rules should prevent stations electing retransmission consent in competitive cable markets from unduly favoring one cable system over another in the terms and conditions under which such consent is granted.

[27]NPRM at ¶45.

benchmarks may be easy to adopt, they will be difficult to police and enforce. For example, who will be responsible for determining whether the benchmark is met? In a potential or actual overbuild situation, cable operators will be understandably reluctant to provide information that might be helpful to their competitors. Accordingly, the determination as to whether the benchmark has been met will likely require protracted proceedings before the Commission. Furthermore, the Commission must keep in mind that stations make their must-carry/retransmission consent election only once every three years. During this period, the degree of overbuilding in a particular geographic area can vary significantly so that at different times the same systems may be above or below any benchmark set by the Commission. It makes little sense for the Commission to apply the "same election" requirement to a fluid competitive situation in the type of snapshot manner that would result from the application of an arbitrary triennial benchmark. Accordingly, the Commission should require the same must-carry/retransmission consent election to be made in any situation where two cable operators are operating in the same franchise area, regardless of the degree of actual overbuild which may exist at the time the election is made.[28]

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[28]See Notice of Inquiry in MM Docket No. 89-600, 5 FCC Rcd 362 (Dec. 12, 1989) at ¶ 19 ("the potential for competing cable television systems or other multichannel video alternatives, as opposed to actual competitors [may] exert competitive pressure on cable rates and services"). See also J. Levy and F. Setzer, Measurement of Concentration in Home

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C. **Implementation Procedures.**

The NPRM correctly notes that "because commercial television stations are required to choose between retransmission consent and must-carry rights, the implementation of the new Section 325(b) and the new Section 614 must be addressed jointly."[29] Although the Commission does not anticipate delaying the effective date of the must-carry rules until the retransmission consent provisions become effective on October 6, 1993, the Commission does request comment on whether it would be appropriate to allow a sufficient amount of time for cable systems to come into compliance with the new must-carry rules.[30] Commenters urge the Commission to set October 6, 1993, as the effective date for both sets of rules.

The Commission's rules must provide for a reasonable transition period to come into compliance with the must-carry and retransmission consent provisions of the 1992 Cable Act. The implementation of both must-carry and retransmission consent will have a massive disruptive impact on the channel lineups of a vast majority of cable systems and on the established viewing patterns of cable subscribers. The

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[28](...continued)
Video Markets, Staff Report, FCC Office of Plans and Policy (1982), at 73, 105 ("[s]tatistical indicators of competition that do not take account of potential competition are seriously if not fatally flawed").

[29]NPRM at ¶48.

[30]Ibid.

potential disruption and dislocation caused by the new must-carry and retransmission consent provisions is exacerbated by the fact that the 1992 Cable Act uses entirely new criteria to define those stations which are considered local and thus are entitled to assert must-carry rights. Even cable systems which have continued to carry all local broadcast stations which were considered must-carry under prior FCC rules may be forced to restructure their channel lineup to accommodate new stations which are given must-carry rights for the first time and to negotiate the terms and conditions of retransmission consent to continue carriage of stations which have historically been considered local and to which subscribers have become accustomed.

With respect to retransmission consent stations, including those stations which are considered local under the statute as well as those stations which were considered local under the FCC's previous must-carry rules, cable operators find their signal carriage decisions increasingly complicated. For example, cable operators have never had to operate in an environment where signal carriage of a substantial portion of a cable operator's broadcast channel lineup could only be accomplished with the consent of the stations.[31] Even under

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[31]Indeed, the numerous difficulties in implementing retransmission consent led to the FCC abandoning its retransmission consent experiment when it adopted its 1972 Cable Rules. See Cable Television Report and Order, 36 FCC 2d 143 (1972) at ¶59, see also H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. at 89 (1976) ("[t]he Committee recognizes, however,

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the FCC's former rules providing must-carry rights for local stations and limiting the carriage of distant signals, cable operators could determine the universe of potential stations which they would be entitled to carry based on objective criteria. Operators could reliably estimate the amount of channel capacity on their basic tier that would be needed for the carriage of local and distant stations even if the final decision had not been made as to which stations to carry. With the implementation of a must-carry/retransmission consent election for local stations and a retransmission consent requirement for most distant stations, such planning can no longer take place. It will no longer be possible for a cable operator to determine beforehand the number or nature of the broadcast stations which it will ultimately be permitted to carry since it is up to each individual station to grant or withhold permission for cable carriage on each particular system. A cable operator's decisions as to tier configuration, equipment and methods to implement tier security, pricing, the creation of marketing materials, and even the preparation of program guides for subscribers cannot take place until operators know what their signal carriage complement will be following negotiation of retransmission consent agreements. In the case of local stations, operators will not even know with

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[31](...continued)
that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system.")

whom they need to negotiate such agreements until the must-carry/retransmission consent election is made.

The PCTA Signal Carriage Survey attached hereto as Exhibit 1 attempts to quantify the potential impact that the retransmission consent provisions of the 1992 Cable Act would have on cable systems located in Pennsylvania. PCTA's membership is comprised of 178 cable systems who serve collectively 93% of all cable subscribers in the State of Pennsylvania. One hundred forty-one of those systems (79%) responded to the survey. Responses were tallied separately for single and multiple ADI systems. Of these, 85% of the systems responding serve subscribers located within a single ADI. The remaining 15% of the systems serve subscribers that are located in more than one ADI.

Of the multiple ADI systems, 62% carry at least one, 38% carry at least 3 and 5% carry six or more television stations located outside of <u>any</u> of the ADIs in which the cable systems are located.[32] In each case, continued carriage of those stations will require the systems to obtain retransmission consent. The impact is even more profound with respect to single ADI systems. 74.2% of the single ADI systems responding to the survey carry at least one station from outside of their ADI, 46.3% carry at least three such stations and 7.5% carry at

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[32]These figures do not include superstations since no retransmission consent is needed for them.

least 6 such stations. One system reported carrying nine stations from outside of the ADI.

Of the 283 non-ADI stations carried on the 89 single ADI systems, data was reported for the length of time those stations were carried in 255 instances. Significantly, nearly 66% of all non-ADI stations carried on single ADI systems have been carried on the systems for more than 20 years. An additional 11% were carried from 10 to 19 years, 9.4% were carried from 5 to 9 years and only 13.7% were carried for less than four years. Finally, of the 283 non-ADI stations carried in single ADI systems, data concerning the off-air availability of such stations in the cable system service area was reported in 269 instances. In 188 of these instances (66.4%), the stations are available off-air in portions of the cable systems' service areas. The Commission must remain cognizant of the fact that many non-ADI stations that are carried by cable systems are in fact more "local" than some of the new ADI stations that they may be required to add. The results of the PCTA Signal Carriage Survey underscore the need for implementation procedures that will allow a smooth and orderly transition from an unregulated to a regulated environment and that will minimize subscriber confusion and dissatisfaction.

Workable implementation procedures must take into account the fact that decisions as to the composition of the basic tier, channel positioning, the need for additional equipment, the preparation of subscriber education and marketing

materials, franchise notice requirements for channel changes and even the preparation of programming guides cannot even be contemplated until after the must-carry/retransmission consent election deadline has passed. Because the October 6, 1993 deadline for retransmission consent contained in the 1992 Cable Act does not appear to allow for extensions or waivers, the FCC must determine how long it will take cable operators to implement changes to their channel lineups once the actual changes are known and then work backward from October 6, 1993 to establish a workable election deadline.

There are several considerations the FCC must factor into its implementation time line. First, adequate time is needed for retransmission consent negotiations. Such negotiations can reasonably be expected to extend for several months in many instances. Even in the relatively few cases where a cable system and broadcast station have no disagreement on the terms of retransmission consent, the need for drafting retransmission consent agreements and the internal and legal review of these agreements will take at least several weeks. In most cases, however, the time will be longer due to the fact that protracted negotiation may be necessary to resolve such issues as channel positioning, carriage of program-related VBI material, compensation and cross promotion. Where negotiations are ultimately unsuccessful, the cable system will need time to find alternate programming and realign channels.